

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KARL PETERSON, et al.,

Plaintiffs,

V.

**GRAOCH ASSOCIATES #111 LIMITED
PARTNERSHIP, et al.,**

Defendants.

CASE NO. C11-5069 BHS

ORDER DENYING
DEFENDANTS' MOTION FOR
RECONSIDERATION

This matter comes before the Court on Defendants Graoch 111 G.P., L.P.; Graoch 111-1 GP, Inc.; 311 G.P., L.P.; 311-1 GP, Inc.; 2431 G.P., L.P.; 2431-1 GP, Inc.; Graoch 160 G.P., L.P.; Graoch 161 G.P., L.P.; Graoch 161-1 GP, Inc.; Lester Pioch (“Pioch”); and Gary M. Gray’s (“Gray”) (collectively the “GSB Defendants”) motion for reconsideration. Dkt. 165. The Court has considered the pleadings filed in support of the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

1 **I. PROCEDURAL HISTORY**

2 On August 24, 2011, Plaintiffs Karl Peterson and Martine Bertin-Peterson
3 ("Petersons") filed a Second Amended Complaint against the GSB Defendants, Graoch
4 Associates #111 Limited Partnership, Graoch Associates #160 Limited Partnership, 311
5 Highland Limited Partnership, 2431 F.M. Limited Partnership, Graoch 160-1 G.P., L.P.,
6 Graoch 160-1 GP, Inc., Graoch 161-1 G.P., L.P., and Graoch 161-1 GP, Inc.
7 ("Defendants"). Dkt. 55. The Petersons allege that they invested in some of the business
8 entities that loaned money to some of the partnerships with the ultimate goal of making
9 real estate investments. *Id.*, ¶¶ 24–85.

10 On October 12, 2011, David Smith entered a notice of appearance on behalf of
11 Defendants 2431 F.M. Limited Partnership, 2431 G.P., L.P., 2431-1 GP, Inc., 311 G.P.,
12 L.P., 311 HIGHLAND Limited Partnership, 311-1 GP, Inc, Graoch 111 GP LP, Graoch 111-
13 1 GP Inc, Graoch 160 G.P., L.P., Graoch 161 G.P., L.P., Graoch 161-1 GP, Inc., Graoch
14 Associates #111 Limited Partnership, Graoch Associates #160 Limited Partnership,
15 Graoch Associates #161 Limited Partnership, Gary M Gray, and Jane Doe Gray. Dkt. 91.
16 On October 20, 2012, Mr. Smith entered a notice of appearance on behalf of Defendant
17 Lester Pioch. Dkt. 97.

18 On June 19, 2012, the Petersons filed a second motion to compel discovery based
19 on Defendants' failure to respond to interrogatories. Dkt. 140. On July 5, 2012,
20 Defendants responded asserting that they had partially responded and additional
21 responses would be forthcoming. Dkt. 146. On July 6, 2012, the Petersons replied. Dkt.
22 147.

1 On July 7, 2012, the Petersons filed the third motion requesting sanctions for
2 Defendants' continued discovery violations, including certain Defendants' failure to
3 attend depositions. Dkt. 149. On July 25, 2012, Defendants responded and argued that
4 the action is subject to an automatic stay because some of the business entities are in
5 receivership in state court. Dkt. 154. On July 27, 2012, the Petersons replied. Dkt. 155.

6 On July 31, 2012, the Court granted the Petersons' motions as to all Defendants
7 except Gray, Graoch Associates #111 Limited Partnership, and Graoch Associates #160
8 Limited Partnership. Dkt. 156. On August 8, 2012, Defendants filed a notice of intent to
9 file a motion for reconsideration reminding the Court that Graoch Associates #111
10 Limited Partnership, Graoch Associates #160 Limited Partnership, and other entities were
11 subject to a temporary automatic stay because of a state court receivership proceeding.
12 Dkt. 160. On August 14, 2012, the GSB Defendants filed a motion for reconsideration.
13 Dkt. 165.

14 **II. DISCUSSION**

15 Motions for reconsideration are governed by Local Rule CR 7(h), which provides
16 as follows:

17 Motions for reconsideration are disfavored. The court will ordinarily
18 deny such motions in the absence of a showing of manifest error in the
19 prior ruling or a showing of new facts or legal authority which could not
have been brought to its attention earlier with reasonable diligence.

20 Local Rule CR 7(h)(1). In this case, the GSB Defendants move for reconsideration on
21 the basis of manifest error

22 because: (a) [the Order] was entered based on Defendant Pioch and
Gray's involuntary inability to appear for their depositions; (b) the Court

1 failed to consider the adequacy of sanctions less draconian than a default
 2 judgment; and (c) the Court disregarded the substantive defenses set forth
 3 in Defendants' opposition briefs. In addition, the GSB Defendants are
 4 incapable of paying any financial sanctions because their main assets are
 5 currently under the control of various receivers.

6 Dkt. 165 at 2.

7 First, the GSB Defendants argue that the Court failed to consider less drastic
 8 sanctions. The GSB Defendants contend that, “[w]hile the Court recognized the
 9 availability of less drastic sanctions, it failed to explicitly discuss why such sanctions
 10 would be inadequate.” Dkt. 165 at 7. The record adequately reflects Defendants' willful
 11 failure to comply with discovery obligations and inability to appear or reschedule
 12 depositions either individually or for Rule 30(b)(6) representatives. Moreover, the Court
 13 imposed less drastic sanctions on Gray because he appeared at his deposition. The Court
 14 allowed Gray additional time to comply with discovery that was propounded in May
 15 2012. On August 10, 2012, the Petersons notified the Court that not only had Gray failed
 16 to comply with his discovery obligations but also that defense counsel had failed to
 17 contact the Petersons' counsel regarding either discovery or a rescheduled deposition.
 18 Defendants' conduct clearly shows that less drastic sanctions would only delay the
 19 ultimate outcome of this matter instead of discovery compliance and an actual decision
 20 on the merits.

21 Second, the GSB Defendants argue that the Court failed to consider its substantive
 22 arguments. Dkt. 165 at 7–8. In particular, the GSB Defendants contend that the Court
 failed to consider the fact that Pioch was in Europe on “business” and that Gray was in
 jail for failure to comply with discovery in another, similar matter. *Id.* The Court

1 considered these facts and found them to be unavailing. Moreover, the Petersons' claims
2 should not be delayed pending an indefinite business trip or an indefinite jail term.

3 Finally, the GSB Defendants argue that the order "indirectly interferes with the
4 receivers' management and control of estate property." Dkt. 165 at 8. If any such
5 interference exists, then the particular receiver can bring the particular interference before
6 the Court. Hypothetical problems do not create manifest error.

7 **III. ORDER**

8 Therefore, it is hereby **ORDERED** that the GSB Defendants' motion for
9 reconsideration (Dkt. 165) is **DENIED**.

10 Dated this 22nd day of August, 2012.

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BENJAMIN H. SETTLE
United States District Judge
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